

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**

**V**

**GE Aviation Inc**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid sick pay  
RSA 275:44 IV liquidated damages

**Employer:** GE Aviation Inc, One Neumann Way MD J104, Cincinnati, OH  
45215

**Date of Hearing:** March 30, 2015

**Case No.:** 49580

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserted he is owed \$1,958.23 in unpaid sick pay and liquidated damages. He claims the employer failed to pay his accrued sick pay upon his termination from the employer. He also alleges the employer is liable for liquidated damages because they failed to pay his final wages consisting entirely of vacation pay within 72 hours of his termination date, January 8, 2014.

At the hearing, the claimant clarified he is seeking \$1,958.23 in unpaid sick pay and \$6,671.50 in liquidated damages. He calculated the sick pay at 58.71 hours at \$33.30 per hour; and the damages at 10% per day for ten days, based on a final paycheck of \$6,671.50.

The employer placed the claimant on paid administrative leave during an internal investigation. That investigation ultimately resulted in the termination of the claimant's employment on January 8, 2014. The employer provided a January 9, 2014, letter of benefit continuation to the claimant. Because that letter did not contain a check or reference when his check would be available, he feels the employer intentionally failed to send the check.

The claimant testified that at his internal appeal of his termination on January 28, 2014, he asked about his final pay check. He then received a direct deposit for the vacation pay on January 30, 2014.

He further testified that he may have misread the sick policy and the conditions under which payment is made for sick time.

The employer denied the claimant is due any sick pay pursuant to their written policy, previously submitted. They also produced a receipt for the employee handbook signed by the claimant. The sick policy reads, in relevant part, "You will receive payment for unused accumulated sick and personal hours if your continuous service ends because of retirement, layoff, plant closing, office closing or in certain cases, a transfer or sale of a business to a successor employer, or if required by law. Your estate will also receive payments for unused sick and personal hours in the event of your death."

The employer terminated the claimant's employment. This termination was not the result of retirement, layoff, plant closing, office closing or a transfer or sale of a business to a successor employer, and is not required by law.

The employer's representative testified that the claimant's final vacation pay check had not been generated due to a clerical error. She stated the termination process contains two separate processes. One process produces the benefits letter which the claimant received, dated January 9, 2014. The second process terminates the claimant in the payroll system, which generates a final paycheck for all hours worked and any applicable vacation pay. Due to an error, the second process had not been completed. A payroll specialist noticed that the claimant's name continued to appear on payroll, despite having been terminated. At that time, she verified the information and properly terminated the claimant on the system, which generated a direct deposit on January 30, 2014.

She testified that she had not been instructed, nor did she instruct anyone, to withhold payment to the claimant. They paid the claimant late in error, not willfully or intentionally.

### **FINDINGS OF FACT**

The claimant worked for the employer from 1986 until January 8, 2014. The employer terminated the claimant's employment on January 8, 2014. The claimant did not receive his final paycheck consisting entirely of vacation pay until January 30, 2014. He did not receive any pay for his accrued sick time.

He argued the payment for the sick pay is due.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding sick leave pay. Lab 803.03 (b) requires employers to provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all other fringe benefits per RSA 275: 49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer properly notified the claimant of their written policy regarding sick pay. They also maintained on file the claimant's signed acknowledgement of the sick pay policy.

The employer's sick pay policy reads, in relevant part, "You will receive payment for unused accumulated sick and personal hours if your continuous service ends because of retirement, layoff, plant closing, office closing or in certain cases, a transfer

or sale of a business to a successor employer, or if required by law. Your estate will also receive payments for unused sick and personal hours in the event of your death.”

The employer terminated the claimant’s employment. This termination was not the result of retirement, layoff, plant closing, office closing or a transfer or sale of a business to a successor employer, and is not required by law.

The Hearing Officer finds the employer properly notified the claimant of their written sick pay policy. The policy does not allow for the payment of sick pay under the conditions of the claimant’s termination. Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed sick pay under the written sick pay policy of the employer.

Because no sick pay wages are found to be owed, no liquidated damages can be awarded.

The claimant argued the employer should be liable for liquidated damages as the employer terminated his employment on January 8, 2014, and he did not receive his final paycheck for his vacation time until January 30, 2014. Because he received a letter dated January 9, 2014, outlining his benefits and did not receive a check or a date he would receive the check, he feels the employer intentionally failed to send the check.

The employer provided credible testimony that the check delay had been caused by a clerical error, and in no way to deny the claimant his accrued vacation pay. Upon finding the error, and simultaneously being noticed by the claimant that he had not received a check, the employer paid the vacation pay via direct deposit.

RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer, "willfully and without good cause fails to pay" all wages within the timeframe required by statute. The New Hampshire Supreme Court defined "willfully and without good cause" in Ives v. Manchester Subaru, Inc. 126 NH 796 to mean, "voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed". The Court continued, "an employer acts willfully if, having the financial ability to pay wages which he knows he owes, he/she fails to pay them".

The Hearing Officer finds the employer’s argument that the failure to send the check because of a clerical error, persuasive. The employer did not voluntarily choose not pay the wages to the claimant. Therefore, the Hearing Officer finds that the claimant failed to prove by a preponderance of the evidence that the employer voluntarily, with knowledge of the obligation and despite the financial ability to pay the wages owed, failed to pay the wages in the required timeframe.

## **DECISION**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as RSA 275:43 V considers sick pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is due any sick pay, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:44 IV holds an employer liable to an employee for liquidated damages if the employer willfully and without good cause fails to pay wages due in the time frame required by statute, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that the employer willfully and without good cause failed to pay wages due in the time frame required, it is hereby ruled that the portion of the Wage Claim for liquidated damages is invalid.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: April 24, 2015

MJD/kdc